

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE BED BATH & BEYOND INC.
SECTION 16(b) LITIGATION

No. 22-cv-9327 (DEH)

**DECLARATION OF MICHAEL I. GOLDBERG IN SUPPORT OF THE
MOTION OF NOMINAL DEFENDANT BED BATH & BEYOND INC.
(n/k/a 20230930-DK-BUTTERFLY-1, INC.) FOR SUBSTITUTION AS PLAINTIFF AND
TO STAY CONSIDERATION OF THE AMENDED OMNIBUS MOTION TO DISMISS**

MICHAEL I. GOLDBERG hereby declares under 28 U.S.C. § 1746 as follows:

1. My name is Michael I. Goldberg. I am an attorney and a partner at the law firm of Akerman LLP practicing from its office in Fort Lauderdale, Florida. I have been admitted to practice law in the States of New York and Florida.

2. I make this declaration based on personal knowledge and in support of the Motion of Nominal Defendant Bed Bath & Beyond Inc., n/k/a 20230930-DK-Butterfly-1, Inc. for Substitution as Plaintiff and to Stay Consideration of the Amended Omnibus Motion to Dismiss. If called to testify about the matters set forth herein, I would testify in accord with this declaration.

3. By order of the U.S. Bankruptcy Court for the District of New Jersey, I was appointed the Plan Administrator for Nominal Defendant Bed Bath & Beyond Inc., n/k/a 20230930-DK-Butterfly-1, Inc. (“BB&B”), under the Second Amended Joint Chapter 11 Plan of BB&B and its Debtor Affiliates (the “Plan”). My appointment became effective along with the Plan on September 29, 2023.

4. The terms of the Plan provide that, as of September 29, 2023, “any Causes of Action that a Debtor (or its Estate) may hold against any Entity shall automatically vest in and become property of the Wind Down Debtors,” including BB&B. Plan § IV.F.7.

5. The Plan further provides that BB&B and I shall have “the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party.” *Id.*


6. The Plan further provides that BB&B and I may take any of the forgoing actions “through [our] authorized agents or representatives.” *Id.*

7. Exercising my powers under the Plan, I caused BB&B to engage James A. Hunter of the Law Office of James A. Hunter and Joseph S. Allerhand of Allerhand & Odoner LLP (collectively, “Section 16(b) Counsel”), to investigate potential claims BB&B may have arising under Section 16(b) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78p(b).

8. Based on that investigation, I believe that BB&B has a “Cause of Action” within the meaning of the Plan under Section 16(b) against Defendants Ryan Cohen and RC Ventures LLC (collectively, the “Cohen Defendants”). BB&B has elected to pursue that Cause of Action against the Cohen Defendants and has today filed the aforementioned motion for substitution as plaintiff in this action.

9. Other than myself and BB&B’s Section 16(b) Counsel, there are no persons authorized to act on BB&B’s behalf in this action.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 6, 2023 in Fort Lauderdale, Florida.

DocuSigned by:

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Michael I. Goldberg